



New York State Decouples from Certain Personal Income Tax Internal Revenue Code (IRC) Changes for 2018 and after

The federal Tax Cuts and Jobs Act (TCJA)¹ which was enacted on December 22, 2017, made many changes that may affect you when filing your federal income tax return. For information on these federal changes see, www.irs.gov/newsroom/individuals.

Since New York State's individual income tax return is based on your federal taxable income and your New York return follows many of the same rules that apply to your federal return, the TCJA changes also may affect your New York return. This document addresses areas where New York's tax treatment of certain federal items of income and deductions will now differ for tax years 2018 and after.

New York State itemized deductions

You may choose to itemize your deductions for New York State purposes for tax years 2018 and after, even if you did **not** itemize on your federal income tax return. New York opted not to follow many of the federal itemized deduction changes made by the TCJA for tax years 2018 and after, so you may be able to claim some deductions on your New York personal income tax return that are no longer available for federal purposes. For example, you may be able to claim deductions for:

- state and local real estate taxes paid, including amounts over the \$10,000 federal limit;
- casualty and theft losses, including those incurred outside a federally declared disaster area;
- unreimbursed employee business expenses; and
- certain miscellaneous deductions that are no longer allowed federally (e.g. tax preparation fees, investment expenses, and safe deposit box fees).

For additional information, see [Form IT-196](#), *New York Resident, Nonresident and Part-Year Resident Itemized Deductions*, and [its instructions](#).

Alimony or separate maintenance payments²

New York opted not to follow changes made by the TCJA to the treatment of alimony or separate maintenance payments made under an alimony or separation agreement that was executed or modified after December 31, 2018. New York requires taxpayers, when calculating their NY adjusted gross income (NYAGI) to:

¹ Public Law 115-97

² Alimony or separate maintenance payments means payments as defined under IRC § 71 as it existed on December 21, 2017.

- subtract from your federal adjusted gross income (FAGI) any applicable alimony or separate maintenance payments you made in the tax year, and
- add to FAGI any applicable alimony or separate maintenance payments you received in the tax year.³

Qualified moving expenses reimbursement and moving expenses⁴

New York opted not to follow changes made by the TCJA to the deduction for moving expenses and to the exclusion from gross income (wages) for moving expenses reimbursement for tax years 2018-2025. New York will continue to allow you to exclude qualified moving expenses reimbursement and moving expenses from your NYAGI. Therefore, when calculating your NYAGI, you must subtract from FAGI:

- any applicable qualified moving expenses reimbursement you received in the tax year; and
- any qualified moving expenses you paid during the tax year.⁵

Change to the Empire State child tax credit

You may no longer use the amount of your current tax year's federal child tax credit or additional child tax credit to compute your Empire State child credit for New York. Your Empire State child tax credit will now be based on the 2017 federal credit amounts and income.⁶ The 2018 Form IT-213, *Claim for Empire State Child Credit*, has been updated to reflect these changes.

529 college savings account

New York opted not to follow changes made by the TCJA to the types of withdrawals that are allowed from a Qualified Tuition Program (QTP) account established under IRC § 529. For New York purposes, withdrawals for kindergarten through 12th grade school tuition are **not** qualified withdrawals under the New York 529 college savings account program.

For New York purposes, a withdrawal is nonqualified if the withdrawal is actually disbursed in cash or in-kind from a New York State 529 college savings account and the funds are not used for the higher education of the designated beneficiary. Higher education generally means public or private, non-profit or proprietary post-secondary educational institutions, in or outside New York State. Therefore, any withdrawal from a New York 529 college savings account used to pay tuition in connection with enrollment or attendance at elementary or secondary public, private, or religious schools is a nonqualified withdrawal.

³ Tax Law § 612(w)

⁴ Qualified moving expense reimbursement and moving expenses mean deductions allowed by IRC §§ 132(g) and 217 as the law existed on December 21, 2017.

⁵ Tax Law § 612(x)

⁶ Tax Law § 606(c-1)(1)

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